IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2226 OF 1989

Shri Pradip Nanjee Gala, Karta of Hindu undivided family of Pradip N. Gala, residing at 356-16, Telang Road, Matunga, Mumbai - 400 019. ..Petitioner.

V/s.

1) The Sales Officer (25), Enforcement Branch, Bombay, having his office at Vikrikar Bhavan, Mazagaon, Bombay-400 010.

2) The Commissioner of Sales Tax having his office at Vikrikar Bhavan, Mazagaon, Mumbai-400 010.

3) Shri M.S. Pathak

4) Shri T.M.Chhaptar
Members, Maharashtra Sales Tax Tribunal, having their office at Vikrikar Bhavan, Mazagaon, Mumbai-400 010.

5) The State of Maharashtra, having its office at Sachivalaya 32, Madam Cama Road, Mumbai- 400 032. ..Respondents.

Mr.B.C.Joshi. Advocate with Mrs.N.R.Badheka with R.S. Naik i/b. Sarla P.Sata for petitioner.

Mr.S.K.Nair, counsel for respondents.

CORAM : DR.S.RADHAKRISHNNAN & J.P.DEVADHAR, JJ.

DATED : 3RD FEBRUARY, 2006.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. The petitioner claims that as a result of the settlement arrived at, the petitioner is relieved of all the obligations to pay the sales tax dues payable by the firm in which he is held to be a partner for Samvat year 2034 and 2035. Accordingly, the petitioner seeks a declaration that the respondents are not entitled to recover any further amount from the petitioner in respect of the sales tax dues payable by the firm. In the alternative, the petitioner claims that the amount collected from the petitioner pursuant to the above settlement must be refunded to the petitioner with 24% interest.

2. The facts relevant for the present petition are that the petitioner carried on business in the name of M/s.Hemal Traders. A Partnership Firm known as M/s. Joshi, Karanunashankar Liladhar & Company (‘firm’ for short), a registered dealer under the Bombay Sales Tax Act, 1959 (‘B.S.T. Act’ for short) was indebted to M/s.Hemal Traders for a sum of Rs.10,00,000/-. With a view to secure the said amount, the petitioner was inducted as a partner of firm from 8/4/1978 as a sleeping partner by executing a deed of partnership on 8/4/1978. Under the said partnership deed the

petitioner was entitled to share in the profits of the partnership at 34% which was the highest amongst all the partners. The petitioner claims that the fact of his joining the firm as a partner was not intimated to the sales tax authorities as the petitioner was only a formal partner and was not to participate in the business and was not to bear any liability of the firm. It is the case of the petitioner that by a notice dated 27/10/1978 he had sought to retire from the firm with effect from 1/11/1978 and the same was accepted by all the partners and the same was recorded in the deed of retirement executed on 27/6/1979.

3. In the meantime, the Sales Tax Officers from the Enforcement Branch had visited the office of the firm on 26/6/1979 and 2/7/1979 and had taken away the accounts and records of the firm for the period commencing from 12/11/1977 to 31/10/1978 and 1/4/1978 to 24/6/1979.

4. On scrutiny of the books, the sales tax authorities claim to have noticed that the dealer, i.e. the firm had shown in its return false claims against form 16 and thus evaded payment of tax during S.Y.2034 and S.Y.2035 on a large scale. Accordingly, show cause notices were served on the dealer with a copy to the

petitioner for the above two years. The petitioner appeared before the concerned officer and submitted that he was a formal partner of the firm and, therefore, not liable for the dues of the firm and sought inspection of documents. The petitioner claims that without giving full inspection, an exparte assessment order was passed on 17/12/1979 for Samvat 2034 (12/11/1977 to 31/10/1978), confirming the demand for Rs.13,33,091/- under the B.S.T.Act and Rs.85,878/- under the C.S.T. Act. In the said assessment order, it was stated that inspection and copying of the seized books of account has been carried out by the authorised representative of the petitioner for several days from 16/11/1979. It was further recorded that the petitioner was deliberately seeking adjournment time and again with a view to delay the assessment proceedings and, therefore, the assessment for Samvat 2034 has been completed after rejecting the plea for adjournment.

5. Thereafter, the assessment for Samvat 2035 (1-11-78 to 24-6-79) was taken up for hearing. The petitioner once again submitted that he was not a partner and the deed of partnership was executed only with a view to safeguard the amounts due to him from the firm. Alternatively, the petitioner claimed that

he had retired from the firm with effect from 1/11/1978 and accordingly sought a separate assessment for the period from 8/4/1978 to 31/10/1978. The petitioner further informed the adjudicating authority that he was intending to file a Civil Suit to seek a declaration that the petitioner was not a partner of the firm at any time. In fact, the petitioner filed a Suit bearing Suit No.2168 of 1980 in the City Civil Court at Bombay on 5th March, 1980 seeking a declaration that he was not a partner of the firm at any time. However, by rejecting the contention of the petitioner, an assessment order was passed on 15/7/1980 for Samvat 2035 (1-11-1978 to 24-6-1979) confirming the demand and recording a finding that there was sufficient corroborative evidence on record to hold that the petitioner who joined the firm as a partner in S.Y.2034 continued to be a partner of the firm during S.Y.2035. The demand confirmed for S.Y.2035 (1-11-78 to 24-6-79) was Rs.28,18,202/- under the B.S.T.Act and Rs.44,577/- under the C.S.T.Act. It was further categorically recorded in the said assessment order that the petitioner as a partner was jointly and severally liable to pay the tax along with the firm for S.Y.2035.

6. The petitioner filed appeals against the assessments for S.Y.2034 and 2035 and the same were

dismissed by the first appellate authority on 30/9/81. While upholding the assessment orders, the first appellate authority recorded a finding that the petitioner had issued several cheques to third parties during S.Y.2035 as partner of the firm and, therefore, the assessing officer was justified in rejecting the contention of the petitioner that he was not a partner of the firm during S.Y.2035.

7. Being aggrieved by the aforesaid orders, the petitioner filed Second Appeals before the Maharashtra Sales Tax Tribunal.

8. During the pendency of the above appeals, the petitioner addressed a letter to the State Minister for Finance on 23rd November, 1983, seeking settlement in respect of sales tax dues payable by the petitioner as a partner of the firm. In the said letter, it was stated that the petitioner was induced to become a partner of the firm for the purpose of securing the amounts due to him from the firm and since he was a mere sleeping (financing) partner without any liability, the same was not intimated to the Sales Tax Department. It was further stated that the plea of the petitioner that he had retired from the firm with effect from 1/11/1978 has been erroneously rejected and

the petitioner who was only a formal partner has been made liable for the dues confirmed against the firm for S.Y.2034 & 2035. Apart from the criminal proceedings initiated against the petitioner as well as other partners of the firm, the demand confirmed against the firm for S.Y.2034 and 2035 was about Rs.43,00,000/- and the same was sought to be recovered from the petitioner, even though the petitioner could be considered as partner of the firm only for the period from 8/4/1978 to 31/10/1978. With a view to buy peace the petitioner claims to have requested the State Minister for Finance to determine the proportionate demand for the period from 8/4/78 to 31/10/78, so that on payment of the amount so quantified, the petitioner could be relieved of all the obligations and consequently, all the criminal and civil proceedings pending in the matter could be withdrawn.

9. On 16/1/1984 the Commissioner of Sales Tax, Maharashtra State, Bombay addressed a letter to the petitioner which reads as under:-

" Office of the
Commissioner of Sales Tax,
Maharashtra State, Bombay,
8th floor, Vikrikar Bhavan,
annexe, Mazgaon, Bombay-10.

Dated: 16th January, 1984.

To,

Shri. Pradip N. Gala,
C/o. Smt. Zaverben Nanji Gala,
356, Raj Niketan, Telang Road,
Matunga, Bombay - 400 019.

Dear Sir,

With reference to the petition addressed to the Minister for Finance, Government of Maharashtra, Bombay, I have to draw your attention to the provision in Section 18 of the Bombay Sales Tax Act, 1959 which provides that the liability in the case of partnership firm is joint and several. The amount of tax assessed by the Sales Tax Officer (Enforcement) for the period 12.11.1977 to 31.10.1978 aggregates to Rs.13,33,091/- under the Bombay Sales Tax Law and to Rs.85,878/- under the Central Sales Tax Law. The Total coming to Rs.14,18,969/-. Further, in respect of the period during which you were the partner in the firm, the tax amount aggregates to Rs.12,52,163/- under the Bombay Sales Tax Law and Rs.77,268/- under the Central Sales Tax Law out of which your share on the basis of the partnership deed comes to Rs.4,25,735/- & Rs.26,271/- respectively. Further, in case you are able to show that some more sales have been to genuine licence holders and if the Deputy Commissioner is satisfied on this issue than the liability may still further come down. You are requested to apply accordingly.

Yours faithfully,

Sd/-
Commissioner of Sales Tax,
Maharashtra State, Bombay."

10. In reply thereto, the petitioner addressed another letter on 25/1/1984 requesting the Commissioner of Sales Tax to scale down the quantified demand by 50% and in the alternate the petitioner be permitted to pay

the quantified amount of Rs.4,52,006/- (Rs.4,25,735/- and Rs.26,271/-) in instalments. The petitioner received a letter dated 15th February, 1984 signed by a person for and on behalf of the Commissioner of Sales Tax, Maharashtra State, Mumbai which reads as under:-

" 8th floor, Vikrikar Bhavan, Annexe,
Mazgaon, Bombay - 400 010.

To,

Shri. Pradip N. Gala,
C/o. Smt. Zaverben Nanji Gala,
356, Raj Niketan, Telang Road,
Matunga, Bombay - 400 019.

No.MIA-1084/Adm-5/9 Bombay Dt. 15.2.1984.

Dear Sir,

In continuation of this office letter dated 16.1.84 and with reference to your letter dated 25.1.84, I have to inform you that it is not possible to give instalment facility. You should pay the entire amount in one stroke.

Yours faithfully,

Sd/-
For Commissioner of Sales Tax,
Maharashtra State, Bombay."

11. In the light of the aforesaid letter, the petitioner paid a sum of Rs.4,52,006/- as quantified in the letter dated 16/1/84 and by a letter dated 20th February, 1984 requested the Commissioner of Sales Tax

to withdraw all the proceedings and cases criminal or otherwise as understood and agreed.

12. It is an admitted fact that neither the petitioner has withdrawn the Civil proceeding filed by him, which were pending at the relevant time before the Second Appellate authority nor the Sales Tax authorities have withdrawn the Criminal proceedings initiated against the petitioner and other partners. Even the declaratory Suit filed in the City Civil Court at Bombay was not withdrawn by the petitioner. When the appeals filed by the petitioner came up for hearing before the Tribunal, the petitioner contended that in view of the above settlement the defence of the Sales tax department be struck down and the appeals filed by the petitioner be allowed. The respondents by their affidavit dated 9/9/1985 denied that there was any settlement and further submitted that no decision has been taken to absolve the petitioner from the liability to pay for the dues of the firm for S.Y.2034 and 2035. Thereupon, the petitioner made an application for production of the files to establish the settlement before the State Minister for Finance. However, the Tribunal by its order dated 4th February, 1989 rejected the application of the petitioner on the ground, that the issue before the Tribunal was, whether the

liability of the firm for S.Y.2034 and 2035 confirmed by the adjudicating authority as well as the first appellate authority was in accordance with law or not and that the Tribunal was not called upon to go into the question as to whether there was any settlement between the parties and whether the petitioner was relieved of his obligation. Accordingly, the application filed by the petitioner was dismissed by the Tribunal. Thereupon, the petitioner has filed the present petition.

13. Mr.Joshi, learned counsel appearing on behalf of the petitioner submits that in the present case, the petitioner had appeared before the then State Minister for Finance and after considering the settlement application, as also the documents furnished by the petitioner, the State Minister for Finance had made necessary endorsement on the file and accordingly, the Commissioner of Sales Tax by his letter dated 16/1/1984 quantified the amount payable by the petitioner at Rs.4,52,006/-. The petitioner wanted that the amount so quantified be further reduced by 50% or in the alternative the petitioner be given liberty to pay the quantified amount in instalments. However, by a letter dated 15/2/1984 the request was rejected and the petitioner was called upon to pay the entire amount in

one stroke. Accordingly, the petitioner was induced to pay Rs.4,52,006/ and believing that on payment of the above amount the petitioner would be discharged of all the liabilities, the petitioner in good faith paid the said amount. In these circumstances, Mr.Joshi submitted that it is not open to the respondents to contend that there was no settlement and the respondents are estopped from recovering any further amount from the petitioner in respect of the dues payable by the firm.

14. Mr.Joshi further submitted that he has voluminous evidence on record to show that the firm itself was not liable to pay any tax, however, without giving adequate opportunity to the petitioner to establish the same, exparte assessment order was passed for S.Y.2034 in undue haste. Similarly, in the assessment for 2035, the demand has been erroneously confirmed and it is held that the petitioner continued to be a partner of the firm even after 31/10/78. The request for a separate assessment for the period from 8/4/1978 to 31/10/1978 during which the petitioner could be considered as a partner of the firm has not been considered. Even the first appellate authority failed to do the needful and, therefore, the petitioner was forced to approach the Sales Tax Tribunal by filing

the Second Appeals and the same were pending for several years. In these circumstances, apart from the fact that the liability confirmed against the firm itself was unsustainable, since the petitioner was held to be partner of the firm even after 31/10/78 (in spite of his retiring from the firm with effect from 1/11/78) with a view to buy peace, the petitioner had approached the then State Minister for Finance seeking settlement. On perusal of the documents and after hearing the petitioner and on being satisfied, the then State Minister for Finance accepted the offer of settlement and accordingly, in the light of the above settlement the Commissioner of Sales Tax had issued a letter on 16/1/1984 quantifying the amount due and payable by the firm for the period 8/4/1978 to 31/10/1978 and on the basis of the partnership deed, quantified the amount payable by the petitioner for the said period. These facts could be easily verified on production of the relevant files. However, both the State Government as well as the Sales Tax department have deliberately held back the relevant files with ulterior motives and with fraudulent intentions. Accordingly, Mr.Joshi submitted that in view of the failure on the part of the respondents to produce the relevant files in spite of several orders passed by this Court, adverse inference must be drawn against the respondents and the Writ

Petition filed by the petitioner be allowed with exemplary costs.

15. Mr.Joshi further submitted that the plea of the petitioner that he was not a partner of the firm at any time, is now established by the decree passed in Suit No.2168 of 1980 by the City Civil Court at Bombay on 16/10/1998. The said decree passed by a Competent Civil Court on 16/10/1998 to the effect that the petitioner was not a partner of the firm at any time is binding on the department. Thus, as per the aforesaid decree, the respondents cannot recover any amount from the petitioner in respect of the sales tax dues of the firm and even the amount recovered under the settlement is liable to be refunded to the petitioner. However, Mr.Joshi submitted that in all fairness the petitioner would stick to the settlement arrived at between the parties and accordingly prayed that the petitioner be allowed with costs.

16. Mr.Nair, learned counsel appearing on behalf of respondents, on the other hand, submitted that under the Sales Tax Act, apart from the power of remission of tax payable by the dealer under section 45 of the B.S.T. Act, there is no other provision under the Act which empowers the authorities to settle the liability

of an individual partner. Section 18 of the B.S.T. Act specifically provides that in respect of the dues of the firm, the liability of a partner is joint and several and, therefore, neither the State Minister for Finance nor the Commissioner of Sales Tax could enter into any settlement regarding the liability of individual partner in respect of the dues of the firm.

17. As regards the non production of the relevant files, Mr.Nair submitted that in the past the very same issue was agitated before the Sales Tax Tribunal and affidavits were filed as far back as in the year, 1985 stating that in spite of the best efforts the said files were not traceable. Mr.Nair submitted that in the ordinary course, if at all an order was passed by the State Minister for Finance, a copy of the said order would have been served upon the petitioner. However, the petitioner has not produced any settlement order. He submitted that if there was any settlement arrived at, then, there was no reason as to why the respondents would hold back the files and, therefore, the fact that the files are not traceable cannot be a ground for drawing any adverse inference against the respondents.

18. Mr.Nair further submitted that even from the

letters dated 16/1/1984 and 15/2/1984 on which heavy reliance is placed by the petitioner, it cannot be inferred that there was any settlement. On the contrary, it is clearly stated in the letter dated 16/1/1984 that under the B.S.T. Act the liability of the partner in respect of the dues of the firm is joint and several. He submitted that although the Commissioner had quantified the share of the petitioner in respect of the liability of the firm for the period from 8/4/78 to 31/10/78 based on the partnership deed, nowhere in the said letter it is stated that there is any order of settlement or any representation that on payment of the amount quantified therein the petitioner will be absolved of all the obligations under the B.S.T. Act. Accordingly, Mr.Nair submitted that there is no merit in the petition and the same is liable to be dismissed.

19. We have carefully considered the rival submissions. The case of the petitioner is that although the liability fastened upon the firm itself is unsustainable in law, since the respondents have erroneously considered the petitioner to be a partner of the firm during S.Y.2034 and S.Y.2035 and the entire liability of the firm was sought to be recovered from the petitioner in spite of his retiring from the firm

with effect from 1/11/78, the petitioner had approached the State Minister for Finance seeking settlement and the same was accepted as well as implemented and, therefore, the petitioner is absolved of all the liabilities confirmed against the firm for S.Y.2034 and S.Y.2035. Thus, in this petition we are not called upon to go into the validity of the liability confirmed against the firm for S.Y.2034 and S.Y.2035. The only issue required to be considered in this petition is that, assuming the liability confirmed against the firm is valid, having settled the claim qua the petitioner by quantifying the amount payable by him as a partner of the firm and the petitioner has paid the quantified amount in full and final settlement of the claim, is it open to the respondents to back out of the settlement and seek to recover the entire liability of the firm from the petitioner.

20. Before dealing with the question regarding the implementation of the settlement, it is necessary to find out as to whether such a settlement was permitted under the B.S.T. Act. Section 18 of the B.S.T. Act specifically provides that the liability of a partner in respect of the dues payable by the firm is joint and several. Apart from Section 45 of the B.S.T. Act which permits remission of the tax payable by the

dealer i.e. the firm in the present case, there is no provision under the B.S.T. Act empowering the State Government or the Commissioner of Sales Tax to enter into a settlement with an individual partner regarding his liability in respect of the dues payable by the firm. It is neither the case of the petitioner that he had sought remission of the tax payable by the firm for S.Y.2034 and S.Y.2035 nor it is contended that the liability of the firm for S.Y.2034 and 2035 has been settled. Therefore, in the absence of any specific provision contained in the B.S.T. Act, there could be no settlement with an individual partner so as to discharge him from his obligation to pay the sales tax dues payable by the firm.

21. Even assuming that such a settlement was permissible under section 45 of the B.S.T. Act, the next question to be considered is, whether, in fact, there was any settlement in the present case ? It is true that if the relevant files were produced, it could be easily found out as to whether any settlement was ordered by the then State Minister for Finance. The consistent stand of the respondents since 1985 is that the relevant files pertaining to the alleged settlement are neither traceable in the office of the State Government nor in the office of the Commissioner of

Sales Tax. It is contended on behalf of the petitioner that the respondents are deliberately withholding the files and, therefore, adverse inference should be drawn against the respondents. We find it difficult to accept this contention because, firstly, as rightly contended by Mr.Nair, if an order for settlement was passed by the State Minister for Finance then, in the ordinary course a copy of the said order would have been forwarded to the petitioner. The petitioner has not produced any order to that effect. Secondly, if at all there was a settlement ordered by the State Government in accordance with law and implemented by the Sales Tax department, then, there is no reason as to why both the authorities would hold back the files. Thirdly, if at all the settlement was genuine and the petitioner had paid the amount in full and final settlement then, immediately on payment of the amount quantified by the commissioner of Sales Tax, the petitioner would have withdrawn the appeals filed by him which were pending before the Sales Tax Tribunal as also the declaratory suit filed by him in the City Civil Court at Bombay. The petitioner, instead of withdrawing the appeals, waited till the appeals were taken up for hearing in the ordinary course and only thereafter, the petitioner sought to contend that there was settlement. Similarly, the petitioner pursued the

declaratory suit filed in the City Civil Court at Bombay, instead of withdrawing it. Thus, we find that the above conduct of the petitioner itself raises doubt as to the genuineness of the settlement. Therefore, it is difficult to accept that the respondents are deliberately withholding the files.

22. Apart from the above, an adverse inference could be drawn only if it was established that there was an order of settlement passed by the State Minister of Finance. The petitioner has failed to establish that any order of settlement was passed by the State Minister for Finance. Moreover, as stated earlier, even the settlement application itself was not made with bonafide intentions, because, firstly, it is not shown under which provision of law such an application was made before the State Minister for Finance. Secondly, unless the finding recorded in the assessment order and confirmed by the first appellate authority to

the effect that the petitioner was a partner of the firm during the period from 8/4/78 to 24/6/79 was set aside by a competent authority, the State Minister for Finance could not have accepted the contention of the petitioner that he was a partner of the firm only for the period from 8/4/78 to 31/10/78. Thus, it is

difficult to believe that the petitioner had made an application under the bonafide blief that the State Minister for Finance could overrule the above findings of the first appellate authority. It is equally difficult to believe that the State Minister for Finance would ignore the findings given by the authorities below and enter into a settlement on the footing that the petitioner was a partner of the firm for the period from 8/4/78 to 31/10/78. Moreover, to draw an adverse inference on account of non production of files, it must be established that the State Minister for Finance had in fact passed an order for settlement and to hide that fact, the file is being withheld by the respondents. In the present case, the petitioner has failed to establish that an order of settlement was passed by the State Minister for Finance and, therefore, drawing any adverse inference on account of the non production of the files does not arise at all.

23. The entire case of the petitioner regarding the settlement is based on the letters dated 16/1/1984 and 15/2/1984 issued from the office of the Commissioner of Sales Tax. Therefore, it is necessary to have a close look at those two letters. At the outset, it may be noted that in none of the above letters there is any

reference to the alleged settlement. In the letter dated 16/1/1984, the Commissioner of Sales Tax has referred to the settlement application made to the State Minister for Finance, but it is not stated as to whether any order has been passed by the State Minister for Finance approving the settlement. On the contrary, immediately after referring to the settlement application made by the petitioner, the Commissioner of Sales Tax draws attention of the petitioner to the provisions of section 18 of the B.S.T. Act whereunder the liability of the partner in the case of partnership firm is joint and several. Thus, from the opening part of the letter dated 16/1/84, it is apparent that the Commissioner of Sales Tax wanted to inform the petitioner that although an application has been made to the State Minister for Finance seeking settlement, such a settlement is impermissible in view of the express provisions contained in section 18 of the B.S.T. Act.

24. However, without assigning any reasons, the Commissioner of Sales Tax in the said letter dated 16/1/84 further quantifies the tax liability of the firm for the period from 8/4/78 to 31/10/78 at Rs.12,52,163/- under the B.S.T. Act and Rs.77,288/-

under the C.S.T. Act and then referring to the partnership deed dated 8/4/78 wherein the petitioner was entitled to share of profits at 34% the Commissioner, determines the liability of the petitioner for the period from 8/4/1978 to 31/10/19778 at Rs.4,25,735/- and Rs.26,271/- respectively. Thus, the contents of the letter dated 16/1/84 written by the Commissioner of Sales Tax are mutually contradictory. On the one hand, the Commissioner states in the said letter that the petitioner is jointly and severally liable to pay the dues payable by the firm for the entire period during which the petitioner was held to be a partner of the firm i.e. from 8/4/78 to 24/6/79 (Rs.42 lakhs approximately) and on the other hand, the Commissioner quantifies the liability of the petitioner at Rs.4,52,006/- (Rs.4,25,735/- towards Bombay Sales Tax and Rs.26,271/- towards central sales tax) which is 34% of the tax payable by the firm for the period from 8/4/78 to 31/10/78. Nowhere in the said letter it is stated by the Commissioner that the liability of the petitioner at 34% of the tax payable by the firm for the period from 8/4/78 to 31/10/78 has been determined as per the orders or the directions given by the then State Minister for Finance. Thus, the case of the petitioner that the said letter was written pursuant to the settlement order passed by the State Minister for

Finance cannot be accepted.

25. Now, the question is, whether the Commissioner of sales tax was justified in quantifying the liability of the petitioner at 34% and that too for the period from 8/4/78 to 31/10/78 and whether such a quantification would bind the department ? In our opinion, the Commissioner of Sales Tax was wholly unjustified in writing such an irresponsible letter, because, as a highest authority under B.S.T. Act, it was his duty to recover the tax determined under the provisions of the Act and it was not open to the Commissioner to interfere with the findings and hold that the petitioner was partner of the firm only for the period from 8/4/78 to 31/10/78, whereas the adjudicating authority as well as the first appellate authority had held that the petitioner was partner of the firm for the period from 8/4/78 to 24/6/79. Moreover, the joint and several liability of the petitioner for the said period from 8/4/78 to 24/6/79 was nearly 42 lakhs of rupees whereas the Commissioner of Sales Tax has quantified the liability of the petitioner at Rs.4,52,006/-. Thus, it is clear that

quantification of the liability of the petitioner was done with an intention to facilitate the evil designs

of the petitioner in defrauding the revenue. The Commissioner knew that the liability of the petitioner was joint and several and in fact, refers to it in the said letter dated 16/1/84 and thereafter takes a completely contradictory stand by quantifying the liability of the petitioner at 34% by relying upon the partnership deed. It may be noted that the Commissioner of Sales Tax has written the said letter very cleverly and dishonestly, so as to eanble the petitioner to argue before the lower authorities that the determination of liability done by the Commissioner of Sales Tax was binding on them and it will not be open to them to recover any further amount from the petitioner and if questioned by someone, then, the Commissioner could argue that he had not stated in the said letter that the amount quantified therein was in full and final settlement of the claim. Therefore, such a determination of the liability of the petitioner contained in the letter addressed by the Commissioner of Sales Tax which is ex-facie contrary to the express provisions contained in section 18 of the B.S.T. Act, would not be binding on the department.

26. It is pertinent to note that the State Government knew far back in the year 1985, that the

Commissioner of Sales Tax had addressed the letter dated 16/1/84 which was misleading and by no stretch of imagination it could be said that such a letter was addressed in bonafide exercise of power. When a person like the Commissioner of Sales Tax, who is entrusted with the responsibility of enforcing the demands confirmed under the provisions of the Act addresses such letter which had the revenue effect to the tune of nearly Rs.38 lakhs, it was the bounden duty of the State to take corrective measures against the erring Commissioner of Sales Tax. However, it appears that no action was taken against the said Commissioner of Sales Tax and he has been allowed to retire peacefully.

27. Even though the petitioner has paid the amount quantified by the Commissioner of Sales Tax vide letter dated 16/1/84, the petitioner cannot escape liability determined in the assessment orders, because, firstly the said letter nowhere states that on payment of the amount quantified therein the petitioner would be absolved of his obligation to pay the dues of the firm for the period during which the petitioner was held to be partner of the firm. Secondly, the petitioner has failed to establish that he was informed and assured that on payment of the amount quantified by the Commissioner he would be absolved of the entire

liability. Thirdly, the letter of the Commissioner of Sales Tax dated 16/1/84 was based on the representation contained in the petitioner's letter dated 23/11/83 which itself was not bonafide. Therefore, the petitioner who is instrumental in adopting a device which is impermissible in law cannot be permitted to take advantage of his own wrong. In short, the application for settlement made by the petitioner itself being not bonafide, it is not open to the petitioner to contend that he has made the payment under the bonafide belief that on such payment, he will be absolved of his liability to pay for the dues payable by the firm. Consequently, the question of refunding the amount paid pursuant to the letter dated 16/1/84 does not arise at all.

28. The contention of the petitioner that the sales tax dues of the firm cannot be recovered from the petitioner, in view of the decree passed in Suit No.2168 of 1988 by the City Civil Court at Bombay on 16/10/1998 to the effect that the petitioner was not a partner of the firm at any time is also without any merit. It cannot be said that the above decree binds the respondents, because, firstly the respondents were not parties to the Suit No.2168 of 1988 (see A.I.R. 1970 S.C. 1854) and, therefore, the decree passed in

the said suit will not be binding on the respondents. Secondly, the concept of 'formal partner' is foreign to the Partnership Act and unless the findings recorded by the adjudicating authority and confirmed by the first appellate authority to the effect that the petitioner was a partner of the firm are set aside by a competent authority, the sales tax authorities are bound to enforce the demand and recover the dues of the firm from the petitioner. Thirdly, the said decree passed in Suit No.2168 of 1988 may at best bind the parties to the suit as they have accepted the decree passed in the above suit. Accordingly, we hold that the decree passed in Suit No.2168 of 1980 shall not affect the rights of the respondents to recover from the petitioner the dues confirmed against the firm for the period during which he was a partner of the firm. In view of our finding that there was no settlement, it is not necessary to deal with several decisions relied upon Mr.Joshi on the issue relating to promissory estoppel.

29. For all the aforesaid reasons, we hold that the petitioner has failed to establish that there was any settlement or that he had paid the amount towards the dues payable by the firm under the bonafide belief that on such payment he would be discharged of all the

liabilities.

30. In the result, petition fails. Rules is discharged with no order as to costs.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)